REMARKS

This responds to the Office Action dated December 10, 2010.

Claims 12, 15, 17-19, 21, and 25 are amended; claims 1-11 are canceled, without prejudice to or disclaimer by the Applicant; claims 29-31 are added; as a result, claims 12-31 are now pending in this application.

Interview Summary

Applicant thanks Examiner Sang Paik for the courtesy of a telephone interview on February 23, 2011, with Applicant's representative Joseph P. Mehrle and Michael Connelly, patent attorney for the assignee of record. During the interview, various proposed claim changes were noted and discussed in view of the references. No agreement was reached.

The Rejection of Claims Under § 112

Claims 17 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Applicant believes the above-noted amendments obviate these rejections.

The Rejection of Claims Under § 102

Claims 12, 14-16 and 25 are rejected under 35 U.S.C. 102(e) as being [anticipated] by Swanson (U.S. Publication No. 2004/0252505). To sustain an anticipation rejection, each and every element in the rejected claims must be taught or suggested in the exact detail and identical arrangement in the cited reference.

At the outset, Applicant would like to point out that visible light used with conventional lamps to illuminate a physical space is not the same as infrared light, and one of ordinary skill in the art would clearly distinguish between visible light over infrared light. In view of this, Applicant believes that Swanson is not a proper reference in the present rejection, since Swanson is incapable of producing infrared light waves. That is, while a traditional household light bulb might produce some heat, it still does not produce infrared heat. Therefore, Applicant believes Swanson in fact teaches away from what is recited in independent claims 12 and 25.

Specifically, claim 12 now recites: "each infrared heating module adapted to produce a wavelength of at least 800 nm . . .." The attached reference indicates that infrared begins at 800 nm (0.8–2.5 μm wavelength), *see* http://en.wikipedia.org/wiki/Infrared_spectroscopy . Additionally, Applicant seriously questions whether anyone of any moderate skill in the art would classify a light bulb as an "infrared heater." This is an unreasonable stretch, especially when the industry views "heat lamps" as infrared heaters. The fact that one reference shows that visible light might on a high-end of the spectrum cross with some definitions of when IR begins on the spectrum is of no relevance because no one reasonably believes that a household light bulb is an infrared heater or heat lamp. Moreover, the industry is very clear about what is classified as infrared (which is heat lamps) and what is classified as bulbs for illumination.

In fact, Swanson is only interested in illuminating a physical space via a conventional light bulb to produce white light. So, Swanson only teaches visible light and would in fact be said to teach away from infrared light because infrared light is non-visible light.

Applicant also notes that infrared, short wave infrared and medium wave infrared were discussed throughout the original filed specification, and Applicant had no need to specify the wave length ranges for these types of energy because it is known in the art. Also, since it is known in the art, Applicant is permitted to amend the claims to define such terms when questioned by the Examiner in a manner that is consistent with the art. That is why the above-noted reference was provided in support of adding the 800 nm to amended claim 12.

For all these reasons, the rejections with respect to claims 12-18 should be withdrawn and these claims allowed.

With respect to amended independent claim 25, Applicant has amended this claim to recited that "each infrared heating module ha[s] one or more short or medium wave infrared bulbs with integral reflectors . . .." Clearly, Swanson does not even remotely suggest that its device can hand short or medium wave infrared bulbs, such a situation with the teachings of Swanson would result in a fire or a blown fuse for sure. In this regard, Swanson also teaches away from Applicant's amended independent claim 25.

Accordingly, the rejections with respect to claims 25-28 should be withdrawn and these claims allowed. Applicant respectfully requests an indication of the same from the learned Examiner.

The Rejection of Claims Under § 103

Claims 13, 19 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson (U.S. Publication No. 2004/0252505) in view of Chapman, Jr. et al. (U.S. Patent No. 3,694,647; hereinafter "Chapman"). Obviousness requires that each and every element be taught or suggested in the proposed combination of references.

At the outset and for the record, Applicant would like to state that the Swanson reference teaches away from anything that is non visible light. As such, Swanson teaches away from our radiative heaters, and, therefore Swanson is not a proper reference for use in the combination and should be withdrawn.

The same is true for the other references which only discuss UV light and not radiative heaters used for heating. These visible light references have absolutely no bearing on IR radiation or radiative heaters; as such, all these references are improper and should be removed since they clearly teach away from radiative heating as claimed in independent claim 19.

For the record, lamp art is being used to reject IR or radiative heaters, and Applicant believes that this is an overreach and improper. Both Swanson and Chapman are nothing more than lamp art used for visible light.

Notwithstanding the above argument, the combination does not show that "each radiative heater [is] individually removable from the adjustable frame." At best, a bulb is removable from a light socket in a lamp with the light references cited, but certainly there is no ability to remove a radiative heater from an adjustable frame in the references cited.

As such, the rejections of record should be withdrawn and claims 19-24 allowed. Applicant respectfully requests an indication of the same from the learned Examiner.

Claims 20 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson in view of Chapman as applied to claims 13, 19 and 22-24 as above, and further in view of Cekic et al. (U.S. Patent No. 7,697,971; hereinafter "Cekic") or Robinson (U.S. Patent No. 4,366,411). In view of the amendments and remarks presented above with respect to the independent claims, this rejection should be withdrawn. Applicant respectfully requests an indication of the same from the learned Examiner.

Allowable Subject Matter

Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant acknowledges and appreciates the indication that this claim is allowable if rewritten in independent format; however, at this time Applicant believes all claims are in condition for allowance and has not chosen to pursue this single claim.

Newly Added Claims 29-31

Applicant asserts that none of the references of record teach or suggest an "infrared heating module adapted to be removed from the frame, and the infrared heating module having at least one short or medium wave infrared bulb . . .," which is recited in newly added claim 29. As such claim 29, along with dependent claims 30-31 should be allowed. Applicant respectfully requests an indication of the same from the learned Examiner.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402--0938
(513) 942-0224

Date 03-9-2011 By /Joseph P. Mehrle/
Joseph P. Mehrle
Reg. No. 45,535